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2113
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Express Mail Label No. EV 292 278 782 US

Docket No.: A-69464/RMA (125196-73); SJ-09-2000-0045US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ARCHIBALD et al.

Group No. 2113

Application No.: 09/853,336

Examiner: MANOSKEY, JOSEPH D

Filed: May 10, 2001

Confirmation No.: 7375

Title: System, Method, and Computer Program for Selectable or Programmable Data
Consistency Methodology

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR WITHDRAWAL AS ATTORNEY
UNDER 37 C.F.R. § 1.36 and § 10.40**

Sir:

I, the attorney signing below, and all the attorneys/agents associated with customer number 32940, respectfully request permission to withdraw from all further responsibility in the above-referenced patent application, in accordance with 37 C.F.R. § 1.36. This request is enclosed in triplicate.

The last known address of the assignee of the entire interest of the above-referenced patent application is

International Business Machines Corporation
New Orchard Road
Armonk, New York 10504

The address of the local IBM Corporation co-counsel that directly administers the prosecution of these applications is:

Randall J. Bluestone, Esq.
IBM IP Law Department
5600 Cottle Road, L2PA/010
San Jose, CA 95193

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Application No. 09/853,336

Request for Withdrawal as Attorney

I. Basis for Request of Withdrawal under 37 C.F.R. § 10.40(c)

A. 37 C.F.R. § 10.40(c)(1)(vi) – Client Failure to Pay One or More Bills

It is believed a first basis for withdrawal exists pursuant to 37 C.F.R. § 10.40(c)(1)(vi), wherein the client has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time. In this instance, as of this date, IBM Corporation has not paid bills amounting to \$58,508 for more than 60 days of which more than \$13,730 has been due for more than 180 days. In many instances the non-payment relates to disputes as services for which any fee may be charged and the amount due in view of the IBM fee structure. In other instances, there is no apparent reason why bills have not been timely paid.

B. 37 C.F.R. § 10.40(c)(3) – Inability to Work with IBM Management and Administrative Co-Counsel

It is believed a second basis for withdrawal exists pursuant to 37 C.F.R. § 10.40(c)(3) due to practitioner's inability to work with IBM management and administrative co-counsel in New York office. This indicates that the best interests of the client likely will be served by withdrawal. The undersigned attorney has worked well with local co-counsel at IBM San Jose; however, the senior attorneys and management at IBM headquarters New York office have been inflexible and uncooperative making it difficult to maintain a working relationship.

In one instance, IBM management and Administrative co-counsel in the headquarters office are making it unreasonable to continue a working relationship. Specifically, the undersigned has requested a waiver from IBM to allow representation of a party adverse to IBM in a non-patent matter unrelated to the subject matter of the work handled by the undersigned on behalf of IBM and which would have been performed in a different office from that handled by the undersigned. The waiver has been denied by IBM.

In another instance, IBM management and Administrative co-counsel in the headquarters office refuse to entertain possible increases in fee schedule for regional cost differences, for inflation and other increases over time, or for particularly difficult or lengthy applications or sets of prior art in patent application matters.

C. 37 C.F.R. § 10.40(c)(6) – Other Good Cause

It is believed a third basis for withdrawal exists pursuant to 37 C.F.R. § 10.40(c)(6), wherein it is believed in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal. For example, undersigned is unable to perform the work IBM requests in a thorough and professional manner, even with diligence, at the price structure required by IBM. The IBM account has an average realization rate of less than 50% for legal work performed for IBM. Bills currently unpaid and work for which IBM refuses to reimburse and which therefore goes unbilled reduce this 50% realization even further.

In a typical instance, IBM Corporation maintains a nationwide maximum legal services billing limit of \$1,800 for preparation of a response to Office Action independent of complexity, prior-art cited, number of claims, or geographical differences in cost of living or legal service fee norms. This is reduced from a previous allowance of \$2100-\$2500 per office action response with regional adjustment, and the allowable amount has not increased in two years in spite of law firm cost and fee increases. At current partner billing rates, this fee structure permits approximately 4 hours of time for preparation and filing of a response that may more generally require 8-12 hours for adequate and professional treatment. The IBM cost structure permits even lower maximums for administrative matters requiring attorney involvement and does not take into account regional differences in law firm overhead, billing rates, staff salaries, or the like. Many of these administrative costs cannot be billed to the client and represent additional loss that is not reflected in the low realization. The attorney time involved with handling administrative and billing matters leads to further loss on each matter handled.

The IBM work was accepted when the undersigned worked at an Intellectual Property (IP) boutique law firm. This IP boutique law firm was merged into the current law firm in May 2002. Undersigned has tried diligently for the past 2 years to meld the IBM work into the practice structure of the new firm, without success.

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II. Allowance of Time for Client to Act (Status of Application)

At this time, there is no outstanding response due in the above-referenced application. Therefore, the amount of time for response, including extension of time under 37 C.F.R. § 1.136(a), cannot be calculated because this case is awaiting action by the USPTO.

III. Notification of Client

In accordance with 37 C.F.R. § 10.40(a), a copy of this request is being sent to the client. A copy of the letter to the client is attached.

IV. Related Applications for Which Withdrawal is Requested

Withdrawal is also being requested in the following related applications of the assignee:

<u>Application Number</u>	<u>Att. Docket No.</u>	<u>Group</u>	<u>Status of Withdrawal Request</u>
10/832,800	A-67525-1	2141	Submitted herewith
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09/518,551	A-66977	2111	Submitted herewith

It is believed no fees are due with respect to this filing. However, if any fees are required, the Commissioner is hereby authorized to charge deposit account 50-2319.

Respectfully submitted,



R. Michael Ananian

Attorney for Applicant

Attorney Reg. No. 35,050

DORSEY & WHITNEY LLP

Customer No. 32940

Date: September 14, 2004



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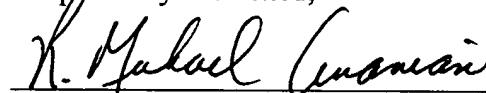
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